



STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
BUREAU OF INSURANCE
34 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0034

Paul R. LePage
GOVERNOR

Eric A. Cioppa
Superintendent

Bulletin 407

Medicare Supplement Requirements, as Updated by the 2014 Amendments to Rule 275

This purpose of this Bulletin is to describe the recent amendments to Bureau of Insurance Rule Chapter 275, and to remind carriers of some of the other important requirements applicable to Medicare supplement coverage in Maine.

Guaranteed Issue

The Bureau continues to receive significant numbers of complaints, inquiries, and requests for assistance indicating that some carriers, marketing entities, or associations are advising potential Medicare supplement applicants, even when they are entitled to guaranteed issue, that they are ineligible for coverage, or that they will be subject to medical underwriting. Medicare supplement carriers offering coverage in this state are directed to conduct a careful review of their policies, procedures, and training to ensure compliance with the guaranteed issue requirements of Rule 275.

The 2014 amendments to Rule 275 added a requirement that carriers, when applicable, develop and document the implementation of procedures to monitor and assess the accuracy of information provided to consumers by outside entities or associations, with particular attention to guaranteed issue rights and other state-specific issues that cannot be addressed accurately by uniform nationwide materials.¹ Examples of “outside entities or associations” might include call centers, captive brokers, or group policyholders such as associations. Carriers must make these procedures and written assessments available to the Bureau of Insurance upon request. All carriers subject to this requirement are requested to submit this documentation to the Bureau no later than January 1, 2016.

Paragraph 11(B)(2) has been amended to clarify the maximum permissible length of any preexisting condition period in a policy purchased during the consumer’s initial six-month open enrollment period. Because Medicare Part A and Part B qualify as creditable coverage, any time between Medicare enrollment and the effective date of the policy must be credited toward the exclusion period. This means that for policies purchased during the initial open enrollment period, the carrier cannot impose a preexisting condition exclusion that extends more than 6 months beyond the beneficiary’s Medicare Part B enrollment date, even if the beneficiary did not have creditable coverage before turning 65. For example, if the policy takes effect at the beginning of month 5 of the open enrollment period, the exclusion period must be reduced to from six months to two months

¹ Rule 275, § 20(A)(6).



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because the beneficiary had four months of creditable Medicare coverage before the effective date of the policy. Because the Bureau has not received complaints about carriers denying claims in this situation, we will not require forms to be revised until the next time new forms are submitted for approval.

Paragraph 12(B)(8) has been amended to clarify that beneficiaries enrolled in both Medicare and MaineCare (dual eligibles) are eligible for Medicare supplement guaranteed issue rights if they lose eligibility for medical benefits under MaineCare, including benefits for Medicare cost sharing such as co-insurance, copayments and deductibles (*e.g.*, QMB). However, persons who lose eligibility only for premium assistance or limited benefits are not entitled to Medicare supplement guaranteed issue rights. (See also Bulletin 385.)

Subsection 23(C) has been added to clarify that when Medicare supplement Plan A is issued during the annual one-month guaranteed issue period, the issuer may not apply a preexisting condition exclusion, waiting period, elimination period, or probationary period. Although several carriers currently have language in their policies indicating that such plans may be subject to pre-existing condition exclusions, the Bureau has been advised that the carriers have not been imposing the exclusion in practice. Therefore, the Bureau will not require carriers to amend their current forms until the next time they submit forms for approval.

Effective Date of Coverage

The Bureau has received requests for clarification regarding the effective date of coverage that is issued on an open enrollment or guaranteed issue basis. First, if the consumer applies before the effective date of his or her enrollment in Medicare Part B,² the carrier may defer the effective date of the Medicare Supplement policy to coincide with the date of enrollment in Medicare Part B. Likewise, if the consumer is entitled to guaranteed issue due to the termination of other coverage such as an employee welfare benefit plan or a Medicare Advantage plan, and applies for a Medicare supplement plan within 60 days before the anticipated termination date of the prior coverage, the new Medicare supplement plan must be made available with an effective date concurrent with the termination of the prior coverage.³ In most other situations, including applications for Plan A policies submitted during the carrier's annual guaranteed issue period, carriers may (but are not required to) defer the effective date until the first day of the month after the application is submitted.

Rates

Section 8 has been amended to require notices of rate increases on pre-2010 standardized plans ("1990 plans") to include a written offer to exchange the plan for a plan currently offered by the carrier. This is an important right because in many cases current plans are significantly less expensive for very similar benefits. In order for the offer to be meaningful to 1990 plan holders, it is important for them to know the actual cost of alternative plans. Therefore, the Bureau will require carriers to include, with any notice of rate increase on a 1990 plan, a notice of the cost of any alternate plans being offered.

² Applications for open-enrollment coverage without medical underwriting or rating may be submitted up to 60 days before the Medicare Part B enrollment date. Rule 275, § 11(A). In addition, consumers who are enrolled in Medicare Part B before age 65 are entitled to a second six-month open enrollment period when they turn 65, and may apply up to 60 days in advance for Medicare supplement coverage effective on their 65th birthday. *Id.*

³ Rule 275, § 12(A)(2).

Coordination of Benefits

Paragraphs 8(A)(6) and 8.1(A)(6) provide for an extension of benefits in certain situations in which the insured is totally disabled. The 2014 amendments clarify that in order to facilitate the timely payment of claims, any disputes over the carriers' respective responsibilities for payment may be resolved in accordance with the procedures applicable to medical coverage as set forth in Bureau of Insurance Rule 790.

Medicare Advantage Plans and Trial Periods

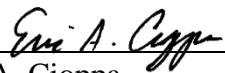
Paragraphs 12(B)(5) & (6) have been amended to clarify that Medicare Advantage enrollees who change Medicare Advantage plans during their three-year trial period do not lose their Medicare supplement guaranteed issue rights as a result of the change.⁴

The 2014 amendments require carriers and producers to advise consumers disenrolling from Medicare supplement plans that they may have the right to a trial period if they are enrolling in Medicare Advantage, and to explain that the length of trial period may actually be less than three years because federal law only permits a return to original Medicare within certain time periods. This notice should be provided regardless of whether or not the consumer has informed the carrier of his or her intent to enroll in a Medicare Advantage plan. This issue could also arise in other situations; for example, when a consumer enrolls in a Medicare Advantage plan mid-year during his or her initial Medicare open enrollment period.

The 2014 amendments clarify that the Medicare Advantage trial period is available to all insureds who terminate coverage under a Medicare supplement plan to enroll in a Medicare Advantage plan for the first time. The opportunity is not restricted to those insureds who have maintained continuous coverage since their initial open enrollment period.

Section 22(A) has been amended to require that on or before March 1 of each year, an issuer shall report the policy or certificate numbers and issue dates for every Maine resident for whom the issuer has more than one Medicare supplement policy or certificate in force, or has both Medicare Advantage and Medicare supplement coverage in force. Carriers that have not already done so must provide this information within 60 days after the issuance of this Bulletin. If carriers have checked their own records and verified that none of their Maine policyholders has duplicate coverage, no reporting is necessary.

September 8, 2015



Eric A. Cioppa
Superintendent of Insurance

NOTE: This Bulletin is intended solely for informational purposes. It is not intended to set forth legal rights, duties, or privileges, nor is it intended to provide legal advice. Readers should consult applicable statutes and rules and contact the Bureau of Insurance if additional information is needed.

⁴ These amendments implement the requirements of Resolve 2013, Chapter 19.